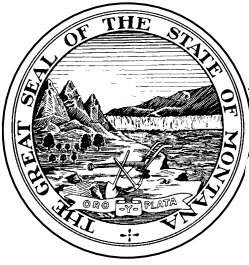


# OFFICE OF THE STATE PUBLIC DEFENDER



## STATE OF MONTANA

Phone: (406) 496-6080  
Fax: (406) 496-6098  
[www.publicdefender.mt.gov](http://www.publicdefender.mt.gov)

44 WEST PARK STREET  
BUTTE, MONTANA 59701

February 25, 2014

Mr. Dan Villa, Budget Director  
Office of Budget and Program Planning  
P.O. Box 200802  
Helena, MT 59620-0802

RE: Request to Transfer General Fund from FY 2015 to FY 2014

Dear Mr. Villa:

This letter is written to request that the Office of the State Public Defender (OPD) be authorized to transfer up to \$1,600,000 in general fund from FY 2015 to FY 2014 to cover expenditures that are expected to exceed our authorized appropriation for FY 2014. This funding will cover the \$2.4 million shortfall expected to occur during this fiscal year, along with other mitigation efforts.

At this point in the biennium, several regions are now in a crisis mode due to **the following unforeseen emergency conditions**: (1) internal staff attorneys have caseloads that are beyond the limits to allow them to be worked effectively; and (2) there are insufficient contractors available to work the excess caseload.

To begin to address this crisis, Chief Public Defender Hooks first focused on the Helena region as the area with the greatest need. He filed motions in two Helena courts of limited jurisdiction asking them to cease assigning cases to the region until it was able to work the cases that it had. The motions were denied by the courts and the region is still being assigned new cases. The agency has appealed the decision to district court, but caseloads continue to be unmanageable and the crisis continues.

Following the denial of the Chief Public Defender's motion to limit new case assignments in Helena, the agency began working with staff in your office to develop a short-term plan to address caseload issues until the office can either (1) win in district court and stop the inflow of cases; or (2) gain permanent funding to fix the caseload issue statewide.

To provide temporary crisis relief to the system and to cover other unanticipated expenditures, the agency estimates a shortfall during fiscal 2014 of approximately \$2.4 million. The information below shows the shortfall by program, function, and expenditure type and provides a short term financing

plan. The agency will develop a more permanent plan for FY 2015 that will include a mitigation plan for the transfer of funds. Long-term the agency will address the caseload issue in the 2017 biennium Executive Planning Process.

#### **SHORTFALL BY PROGRAM, FUNCTION, AND EXPENDITURE TYPE**

Approximately \$2 million of the shortfall is for the Public Defender Program (program 1) non-capital defense. Of this, about half is for personal services (payroll) costs. About \$600,000 is caused by the addition of 10.50 modified FTE to address system stress in areas of the state where adequate contract resources are not available. The remaining \$400,000 is for unearned vacancy savings due to low turnover in attorney staff positions plus leave balance payouts that are not covered by appropriations. On a positive note, the legislature did fund a career ladder adjustment for our staff attorneys to help the agency reduce excessive attorney turnover. During fiscal 2012, program 1 lost nearly three of every ten staff attorneys or 27% of that workforce, and program 2 lost 44% of its attorney workforce. Through December 31, 2013 program 1 has lost only five staff attorneys and program 2 only one. The career ladder adjustment appears to be working. However, the lack of turnover is preventing the agency from meeting its vacancy savings requirement of \$570,000. The agency uses every FTE all of the time and does not have funded positions that it can leave unfilled to meet vacancy savings. We also need to fill vacancies quickly or suffer increases in contractor costs. The cost of a contract attorney is more than \$20 per hour greater than that of a staff attorney. The other half of the program 1 shortfall is related to operating costs. About \$100,000 is related to modified FTE noted above. The remaining \$900,000 will be used to support increased contract attorney costs, primarily to support criminal felony and dependent/neglect cases.

Approximately \$300,000 of the shortfall is for the Public Defender Program capital defense. The entire amount is in operations (non-payroll) to pay contract attorneys, experts, etc.

Approximately \$100,000 of the shortfall is for the Appellate Defender Program (program 2). The entire amount is for contract attorney and transcript costs to cover a 20% increase in appeals during FY 2013 that have carried forward into the FY 2014 workload. The current fiscal year caseloads are still at the magnitude that was experienced during FY 2013.

#### **FY 2014 SHORT TERM FINANCING PLAN**

The agency received \$625,000 of SB 410 funds to pay for modified FTE in program 1 to address system stress. This includes payroll for the modified FTE and related operating costs. The agency expects to file for personal services contingency funds to pay for \$100,000 in unfunded leave balance payouts, and to use excess cash in the amount of \$100,000 in state special revenue funds to cover shortfall items. The transfer of \$1.6 million from FY 2015 to FY 2014 will cover the rest of the shortfall.

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**The agency is preparing a mitigation plan that, to the extent feasible, will allow the agency to live within its remaining appropriation during fiscal 2015. This plan will be presented to you in the near future.**

Sincerely,

Harry J. Freebourn  
Administrative Director

CC: Richard "Fritz" Gillespie, Chair Montana Public Defender Commission  
William F. Hooks, Chief Public Defender  
Wade Zolynski, Chief Appellate Defender  
Kristina Neal, Conflict Coordinator  
Brent Doig, Office of Budget and Program Planning